

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SERGIO A. ALVAREZ,

Plaintiff,

v.

Y. SIMMONS, et al.,

Defendants.

Case No. [18-cv-04267-EMC](#)

**ORDER EXTENDING DEADLINES
AND REGARDING SERVICE ON
DEFENDANT DORFMAN**

Docket No. 22

Plaintiff's request for a 60-day extension of the deadline to file his opposition to Defendants' motion for summary judgment is **GRANTED**. Docket No. 22. The Court now sets the following new briefing schedule: Plaintiff must file and serve his opposition to the motion for summary judgment no later than **March 13, 2020**. *No further extensions of this deadline should be expected.* Defendants must file and serve their reply, if any, no later than **March 27, 2020**. There will not be a hearing on the motion because the motion will be decided on the papers filed by the parties.

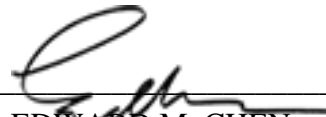
The Court ordered service of process on five Defendants, only four of whom have appeared. Dr. A. Dorfman has not yet been served or appeared in this action. After attempting service of process, the U.S. Marshal filed a "process receipt and return" form stating that Dr. Dorfman could not be served based on the information provided. Docket No. 18. Specifically, the Marshal reported: "according to PBSP, they attempted contacting defendant several times. Cannot locate him." *Id.* In response to the Court's inquiry, counsel for the other four Defendants reported that Dr. Dorfman was no longer employed by the State of California, and that the State was not authorized to accept service on behalf of Dr. Dorfman and had not been retained to represent him. Docket No. 19.

1 “If a defendant is not served within 90 days after the complaint is filed, the court--on
2 motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against
3 that defendant or order that service be made within a specified time. But if the plaintiff shows
4 good cause for the failure, the court must extend the time for service for an appropriate period.”
5 Fed. R. Civ. P. 4(m). Where a prisoner is proceeding *in forma pauperis* and must rely on the
6 Marshal for service of process, “[s]o long as the prisoner has furnished the information necessary
7 to identify the defendant, the marshal’s failure to effect service ‘is automatically good cause’ for
8 not effectuating timely service.” *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994),
9 *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995); *see e.g., id.* (district court
10 did not err in dismissing defendant where plaintiff “did not prove that he provided the marshal
11 with sufficient information to serve” this particular defendant or that he requested service).

12 Service of process has not occurred within ninety days of the date the court ordered service
13 of process on Dr. Dorfman. Although it is the Marshal’s duty to serve process when a prisoner-
14 plaintiff is proceeding as a pauper, the Marshal’s ability to do so depends on a plaintiff providing
15 sufficient information about a defendant for the Marshal to find the defendant to serve him or her.
16 Accordingly, no later than **March 6, 2020**, Plaintiff must provide a current address at which
17 Defendant Dr. Dorfman may be served with process. It is Plaintiff’s obligation, not the Court’s, to
18 gather this information. In the alternative to providing the information, Plaintiff must show cause
19 by that same deadline why he has not provided the information needed to locate Dr. Dorfman and
20 serve process on him. If Plaintiff fails to provide sufficient information to enable service of
21 process to be accomplished on Dr. Dorfman, Dr. Dorfman will be dismissed without prejudice
22 unless Plaintiff shows cause for his failure to provide the information.

23 **IT IS SO ORDERED.**

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25 Dated: January 17, 2020

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28 EDWARD M. CHEN
United States District Judge